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KING COUNTY
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CASE NUMBER: 16-2-25718-6 SEA

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

BRITTANY EASTON, an individual

Plaintiff,

v.

ASPLUNDH TREE EXPERTS, CO.,

Defendant.

NO.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff BRITTANY EASTON, by and through her attorneys of record,
Jenna M. Labourr and Young-Ji Ham of Washington Injury Lawyers, PLLC, and alleges as
follows:

I. INTRODUCTION

1. This is an action for damages sustained by a female citizen of Elma, Washington
against Defendant who, through its intentional conduct and conscious disregard for Plaintiff,
caused her to suffer personal and physical injury, humiliation, and degradation as well as severe
mental and emotional distress and deprivation of her civil and constitutional rights.

COMPLAINT FOR DAMAGES - 1

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II. PARTIES

2. Plaintiff BRITTANY EASTON is an individual residing in Elma, Grays Harbor County, Washington.

3. Defendant ASPLUNDH TREE EXPERTS, CO. is now, and at all times material hereto has been, a corporation organized and existing under the laws of the State of Pennsylvania. It is registered to operate and in fact transacts business in the State of Washington, including King County. Defendant ASPLUNDH TREE EXPERTS, CO. regularly employs more than eight (8) people and is defined as an employer under the Washington Law Against Discrimination ("WLAD") (RCW 49.60).

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III. JURISDICTION

4. Jurisdiction is proper pursuant to RCW 4.28.185(1) (a). Defendant transacts business in the State of Washington and Plaintiff's claim arises from Defendant's transaction of business in this State.

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IV. VENUE

5. Venue properly lies in King County, Washington pursuant to RCW 3.66.040(4) and (8). Defendant resides in King County because it transacts business there. It was a resident of King County when the events occurred, which give rise to this claim.

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V. STATEMENT OF FACTS

6. Plaintiff BRITTANY EASTON is a 28-year-old female who was employed by Defendant ASPLUNDH TREE EXPERT, CO. (hereafter "Asplundh") as a flagger from October,

1 2014 to August 7, 2015. She was briefly re-hired on or about September 27, 2015, but was again
2 laid off on or about October 27, 2015.

3 7. Joe Mel, Sr. was employed as a Crew Supervisor and directly supervised Plaintiff
4 during her employment at Asplundh. At all times relevant to this cause of action, Mr. Mel was
5 an employee of Asplundh and Asplundh had control over Mr. Mel's actions.
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7 8. Plaintiff was the only female on the team overseen by Mr. Mel.

8 9. Plaintiff was proficient at her job and did not receive any write-ups during her
9 employment with Asplundh.

10 10. From the time she began working for Asplundh in October 2014, Plaintiff
11 experienced continuous sexual harassment from Mr. Mel. Mr. Mel engaged in discriminatory
12 and harassing acts, both verbal and physical, on a daily or near-daily basis. The behavior
13 consisted of inappropriate comments, jokes, and sexual innuendos, including, but not limited to:
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15 a. ***Inappropriate comments regarding Mr. Mel's wife.*** On one occasion,
16 Mr. Mel told Plaintiff that his arm tattoo is placed as it is so he "know[s] where to stop fisting
17 [his] wife." On another occasion, during a conversation about DVDs, Mr. Mel told Plaintiff that
18 he and his wife only watch porn DVDs.
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20 b. ***Inappropriate comments related to Ms. Easton's relationship with her***
21 ***boyfriend.*** Mr. Mel suggested on a number of occasions that Plaintiff's back pain, caused by an
22 injury that occurred outside of work, was actually the result of letting her boyfriend "bend[] [her]
23 over and pull[] [her] hair" during sexual activity.
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1 c. ***Inappropriate invasion of space.*** Mr. Mel invaded Plaintiff's personal
2 space and would place his hands within inches of Plaintiff's breasts.

3 d. ***Inappropriate comments regarding food.*** On one occasion, Plaintiff
4 asked Mr. Mel about a meatball sandwich he made and he said, "Oh, you're asking me about my
5 balls."
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7 11. Plaintiff consistently told Mr. Mel she did not like the comments and that he
8 could not speak to her that way.

9 12. Mr. Mel's discriminatory and harassing conduct culminated in an occurrence
10 where Mr. Mel watched Plaintiff relieve herself without her knowledge or permission. On or
11 around June 9, 2015, Plaintiff went into the forest at a work site in order to relieve herself. This
12 was the common practice of Asplundh employees as most job sites were in the middle of the
13 woods without restroom facilities. Mr. Mel was inside a "bucket" on a "boom truck"—a truck
14 which has a standing platform (the "bucket") which can be maneuvered and positioned for the
15 purpose of doing work high above a person's ordinary reach. Mr. Mel positioned the bucket on
16 the boom truck toward Plaintiff in order to watch her while she relieved herself in the forest.
17 Plaintiff was completely unaware that he was doing this at the time and believed she had total
18 privacy at the time. When Plaintiff exited the bushes, Dario Vargas and Chad Sweitzer asked her
19 if she ever felt like she was being watched and they pointed up. When she looked up, she saw
20 Mr. Mel in the bucket still boomed up over the bushes and he smiled and waved at her. Plaintiff
21 found this incident deeply disturbing. Mr. Sweitzer and Mr. Vargas told Mr. Mel to stop this
22 behavior. For several days following this event, Mr. Mel laughed and joked about what he did.
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1 13. Following the bucket incident, Mr. Mel's behavior continued to escalate. On July
2 2, 2015, Plaintiff's work crew had a barbecue with Crew Supervisor Terry Lonborg's crew.
3 Despite the fact Plaintiff had repeatedly told Mr. Mel not to touch her, Mr. Mel approached
4 Plaintiff with his hands extended toward her breasts. Within inches of her, he said, "I should just
5 twist your little titties." Mr. Sweitzer yelled at Mr. Mel, "You have already been warned" and
6 "that is enough[,] it stops now."

8 14. A week or two later, Plaintiff was drinking milk while flagging at a work site.
9 Some of the milk spilled on the side of the container and she licked it. In response, Mr. Mel said
10 to her, "Stop! You're making my wiener twitch." Plaintiff informed Mr. Sweitzer of this
11 comment over the radio.
12

13 15. Plaintiff complained to Mr. Lonborg about Mr. Mel's behavior. Mr. Sweitzer also
14 made Mr. Lonborg aware of Mr. Mel's behavior. Mr. Lonborg did not ask for specifics of the
15 situation, but he did report the harassment to Asplundh General Foreman, Rob Fly. Ms. Easton
16 also talked with her cousin, Steve Easton, who worked for the Grays Harbor Public Utility
17 District ("PUD") about her issues with Mr. Mel. The PUD also brought the matter to Mr. Fly's
18 attention through PUD employee Jeff McClain. Mr. Fly told Mr. McClain not to worry about the
19 situation, as he was "taking care of it."
20

21 16. Following the notifications from the various sources, Mr. Fly spoke to Mr. Mel
22 about Plaintiff's complaint about the bucket incident and told Mr. Mel to be more professional.
23

24 17. Mr. Mel retaliated against Plaintiff and her supportive coworkers once he became
25 aware Plaintiff had made a complaint. Mr. Mel continuously refused to allow Plaintiff and
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1 fellow flagger, Mr. Sweitzer, appropriate breaks for use of bathroom facilities or getting water
2 for more than three hours at a time. The temperature during the summer was extremely hot,
3 more than 90 degrees. Other employees under Mr. Mel were permitted to take breaks. Mr. Mel
4 also told Plaintiff and Mr. Sweitzer that policies had changed so that he could keep them
5 working on the road longer and away from him. He also forced Plaintiff to flag on the other side
6 of the road, which was not customary.
7

8 18. When Mr. Mel was asked to stop these discriminatory actions, he laughed, said he
9 was not doing anything wrong, and continued the discriminatory and harassing behavior.
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11 19. Mr. Fly did not reach out to Plaintiff regarding the problems she was having with
12 Mr. Mel or speak with her at all about the incident. Plaintiff reached out to Mr. Fly herself a
13 week or so after the bucket incident, on or around July 27, 2015. She contacted Mr. Fly and
14 asked if she could talk to him. He responded that he would be out to her work site that day or at
15 the shop when the crew got back. He did not show up that day. A few hours into work the
16 following day, July 28, 2015, Mr. Fly arrived at the work site. He informed her that he would
17 not get Mr. Mel in trouble but, if anything else happened, Plaintiff should let him know.
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19 20. After Mr. Fly spoke with Plaintiff, he spoke with Mr. Mel. Following this
20 conversation, Mr. Mel ignored Plaintiff and Mr. Sweitzer for the rest of the day.
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22 21. Mr. Mel continued his pattern of retaliatory behavior directed at Plaintiff and her
23 supportive coworkers. In the following days, Mr. Mel made several comments around the site,
24 loud enough for Plaintiff to hear, including, and in the spirit of "now I have to be professional."
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1 22. Mr. Mel also repeatedly hugged Plaintiff, saying, "See, I didn't cross any lines,"
2 and made other similar comments. This physical contact was not welcome and Mr. Mel was
3 aware of this, given that Plaintiff had consistently told him not to touch her. The first time he
4 hugged her in this manner was the day after Mr. Fly spoke with him on July 29, 2015. On that
5 day, Mr. Mel approached Plaintiff from behind and hugged her, smiling. Mr. Sweitzer and Mr.
6 Vargas witnessed the hug.
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8 23. Mr. Mel would also continually tell Plaintiff that his direct superior, Mr. Fly, was
9 "like a father to him" and "[had] his back." He was concerned that she would say anything about
10 his behavior to Mr. Fly or anyone from PUD.
11

12 24. Plaintiff complained again to Mr. Fly on or around August 6, 2015. She was laid
13 off the following day under the pretense of budget constraints. Plaintiff alleges that she was in
14 fact fired as a result of her complaints of Mr. Mel's inappropriate, harassing, and discriminatory
15 behavior. Plaintiff's cousin, who worked at the PUD, confirmed to Plaintiff that there were no
16 budget constraints.
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18 25. An investigation was conducted in early September and concluded on September
19 9, 2015. Asplundh determined that Mr. Mel's behavior only warranted a suspension of five days
20 for Mr. Mel. This disciplinary action was not a meaningful or adequate response to the months
21 of sexual harassment experienced by Plaintiff.
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23 26. Plaintiff was re-hired on September 28, 2015. Mr. Mel was restricted from
24 interacting with her.
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1 27. On or around October 7, 2015, Mr. Mel drove twenty-five miles out of the way
2 from his current job site to Plaintiff's job site. Mr. Mel made his presence known to Plaintiff and
3 tried to intimidate her by yelling to her from his truck while driving away.

4 28. Plaintiff complained to Mr. Fly about this intimidating behavior and the next day,
5 October 8, she met with the Regional Manager for Asplundh, Shawn Shapiro, and another
6 manager at Asplundh, Reggie Charlesworth. Mr. Shapiro told Plaintiff he knew she was going
7 through a lot but to just ignore the harassment.

8 29. No further action was taken in response to Mr. Mel's continuing harassing
9 behavior even though Mr. Mel had been restricted from interacting with Plaintiff and had clearly
10 violated this restriction.

11 30. Plaintiff was laid off again on October 27, 2015 under the pretense of budget cuts
12 and has not been offered any other jobs from Asplundh. Plaintiff spoke with her cousin at the
13 PUD and confirmed that no such budget cuts were in effect.

14 31. Asplundh was aware or should have been aware of the discriminatory harassment
15 carried out by Mr. Mel against Plaintiff from July 18, 2015 at the latest, when Mr. Fly became
16 aware of Mr. Mel's conduct that summer (including the bucket incident, the milk incident, the
17 "titty twister" incident, the continuing other inappropriate comments, and the retaliatory
18 behavior).

19 32. Asplundh did not promptly or adequately address Plaintiff's complaints.
20 Asplundh management told her, "That's just Joe." When she complained that the harassment
21 continued, Ms. Easton was laid off under the pretense of budget problems. Asplundh did not
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1 perform an investigation until September 2015. Asplundh's response to Mr. Mel's admitted
 2 misconduct was inadequate and ineffective. Although it found Mr. Mel had engaged in
 3 discriminatory harassment, Asplundh only suspended him for five days. When Plaintiff
 4 complained after Mr. Mel continued to harass her, Asplundh again laid her off.

5 VI. FIRST CLAIM FOR RELIEF

7 (Sex Discrimination in Violation of the WLAD)

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 9 33. Plaintiff is a female and a member of a protected class. Asplundh treated Plaintiff
 10 differently from those of the other sex—males.

11 34. Asplundh discriminated against Plaintiff on the basis of her sex in the terms and
 12 conditions of her employment in violation of the WLAD.

13 35. As a direct and proximate result of Asplundh's discriminatory actions against
 14 Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation, mental
 15 anguish, anxiety, mortification, loss of good health, and emotional and physical distress, for
 16 damages in an amount to be proven at trial.

18 VII. SECOND CLAIM FOR RELIEF

19 (Intentional Infliction of Emotional Distress)

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 21 36. The acts described herein committed by Asplundh were extreme and outrageous
 22 and were done with the intention of inflicting severe emotional distress upon Plaintiff and/or
 23 were done with reckless disregard as to whether such acts would cause Plaintiff severe emotional
 24 distress.
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1 37. At no time did Plaintiff consent or acquiesce to any of Defendant's acts alleged
2 above.

3 38. As a direct and proximate result of Defendant's discriminatory actions against
4 Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation, mental
5 anguish, anxiety, mortification, loss of good health, and emotional and physical distress, for
6 damages in an amount to be proven at trial.
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8 **VIII. THIRD CLAIM FOR RELIEF**

9 (Respondeat Superior)

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11 39. Asplundh is liable for all actions of their employees, managers, and supervisors
12 under the Doctrine of Respondeat Superior. The conduct of these employees, managers, and
13 agents was implicitly ratified by Defendant and involved sex discrimination and intentional
14 infliction of emotional distress.
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16 **IX. FOURTH CLAIM FOR RELIEF**

17 (Negligent Hiring and Supervision and Failure to Train)

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19 40. Asplundh was negligent in training, hiring, managing, and supervising their
20 managers, supervisors, employees, and agents. Asplundh was aware or should have been aware
21 of the unlawful actions of their managers, supervisors, employees, and agents and the failures to
22 correct the wrongful conduct.
23

24 41. Asplundh, through the conduct of its managers, supervisors, employees, and
25 agents ran its business in such a way as to present a risk of both physical and psychological harm
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1 to Asplundh employees. Asplundh knew that Mr. Mel's predatory behavior posed a risk to
2 others, particularly young female employees like Plaintiff.

3 42. As a direct and proximate result of Defendant's discriminatory conduct of its
4 business and failure to adequately train, hire, manage, and supervise its managers, supervisors,
5 employees, and agents, as alleged above, Plaintiff has been harmed in that she suffered
6 humiliation, mental anguish, anxiety, mortification, loss of good health, and emotional and
7 physical distress, for damages in an amount to be proven at trial.
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10 **X. FIFTH CLAIM FOR RELIEF**

11 (Hostile Work Environment)

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13 43. At all times, the discriminatory conduct of Asplundh through its employee, Joe
14 Mel, Sr., was unwelcome.

15 44. Asplundh's unwelcome conduct toward Plaintiff resulted in a discriminatory
16 environment in which she was forced to endure sexual harassment in order to receive the benefits
17 of her employment. The actions of Defendant and its managers, supervisors, employees, and
18 agents interfered with Plaintiff's ability to perform her job in a professional environment, created
19 a workplace permeated with discriminatory intimidation, ridicule, and retaliation and which
20 amounted to a hostile work environment in violation of the WLAD.
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22 45. As a direct and proximate result of Defendant's discriminatory actions against
23 Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation, mental
24 anguish, anxiety, mortification, loss of good health, and emotional and physical distress, all to
25 her damage in an amount according to proof at trial.
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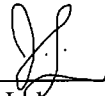
XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendant, granting Plaintiff:

- A. A declaratory judgment that the acts, policies, and practices of Defendant, as complained of herein, violated the rights of Plaintiff as secured by state laws;
- B. General damages to be proven at trial;
- C. All exemplary damages allowable by law;
- D. Prejudgment interest on all amounts claimed;
- E. Reasonable attorney's fees and costs of suit incurred herein; and
- F. For such other and further relief as the Court may deem just.

DATED this 19th day of October, 2016.

WASHINGTON INJURY LAWYERS, PLLC



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